

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE PRUDENTIAL INSURANCE CO.	:	CIVIL ACTION
OF AMERICA, <u>et al.</u>	:	
	:	
v.	:	
	:	
PHOENIX TECHNOLOGIES, INC.	:	NO. 97-4845

**MEMORANDUM ORDER**

AND NOW, TO WIT, this 5th day of December, 1997, upon consideration of plaintiffs The Prudential Insurance Company of America, Prudential Health Care Plan, Inc. and Prudential Health Care Plans of Georgia, New York, California and Connecticut's ("Prudential") motion for reconsideration of the court's Order striking a default judgment entered in their favor and defendant Phoenix Technologies, Inc.'s ("Phoenix") response thereto, the court will deny the motion.

On July 28, 1997, Prudential filed a Complaint against Phoenix in this federal court alleging claims under state law legal theories. On September 8, 1997, at Prudential's request, the court entered a default judgment against Phoenix for its failure to appear, plead or otherwise defend this action. On September 12, 1997, Phoenix first entered an appearance and requested that the court strike the default. On September 25, 1997, the court entered an Order striking the default judgment. On September 26, 1997, Prudential filed a motion to reconsider the September 25, 1997 Order.

Prudential moves for reconsideration on several grounds. However, because the court never had jurisdiction over the Complaint, it will deny the motion for reconsideration. The Complaint alleges that the court has diversity jurisdiction over the corporate parties. (Compl. ¶ 17). It then alleges that one of the plaintiffs and defendant Phoenix both have principal places of businesses in Pennsylvania. Id. ¶ 2, 13. Thus, opposing parties are alleged to be citizens of the same state and so on the face of the Complaint there is no jurisdiction in the federal district court. See Fed. R. Civ. P. 8(a)(1); 28 U.S.C. § 1332(a)(1), (c)(1). Prudential argues that its naming Pennsylvania as one plaintiff's principal place of business was a clerical error. It has since amended the Complaint to properly allege diversity jurisdiction. However, this does not negate the fact that the original Complaint, upon which default judgment was entered, failed to properly allege jurisdiction. A court may raise the issue of jurisdiction, sua sponte, at any time. See, e.g., Biomagnetics, Ltd., V. Spooner, No. 96-6477, 1997 WL 197283, at \*2 (E.D. Pa. April 18, 1997)("[l]ack of subject matter jurisdiction is a ground for dismissal and may be raised at any time by the parties or by the court sua sponte"). Where a court has entered a default judgment without having jurisdiction, that judgment is void. See, e.g., Doughan v. Tutor Time Child Care Sys., No. 95-7562, 1996 WL 502288, at \*1 (E.D. Pa. Aug. 27, 1996). The court cannot reinstate a default judgment on a Complaint which was not properly before the court.

IT IS ORDERED that Prudential's motion for reconsideration is DENIED.

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LOUIS C. BECHTLE, J.